



# Congress of the United States

House of Representatives

Washington, DC 20515

June 3, 2008

## The New Employer Verification Act A Way Forward on Comprehensive Worksite Enforcement

Dear Colleague,

Through hearings, the House is rightly debating how to ensure a legal workforce in the United States. Many in both parties accept that we have a responsibility to enforce our laws and prohibit employment of those here illegally. Our challenge, as the attached article published by the Cato Institute illustrates, is how to get there.

Some members of Congress believe that mandating verification of every single U.S. worker through the Department of Homeland Security's current voluntary pilot employment verification program, known as E-Verify, is the right answer. It is currently used by less than 1 percent of employers.

Mandating E-Verify is not the comprehensive solution we need. That is why we introduced the bipartisan "New Employee Verification Act" (H.R. 5515) or NEVA to achieve the following five principles needed for a workable and comprehensive worksite enforcement solution:

- ***Prohibits unlawful employment*** – NEVA helps ensure a legal workforce by requiring employers to electronically verify the employment eligibility of their new hires and increasing penalties for those employers who do not; NEVA also preempts state and local laws that have resulted in the creation of "sanctuary cities" of illegal workers;
- ***Protects employees*** – NEVA ensures no law abiding U.S. citizen is required to receive permission to work from a federal law enforcement agency and that workers caught in the system due to an error in their personal records are given ample time to correct their records, and to appeal erroneous decisions;
- ***Partners with employers*** – NEVA provides employers with a workable employment verification system that transmit data through a process already used by 90 percent of employers to help track down dead beat dads; NEVA also extends liability protection to employers who act in good faith and who follow the law;

- ***Prevents identity theft*** – NEVA allows workers to stop others from using their Social Security number to obtain employment and creates a voluntary program for employers to authenticate and safeguard the identity of their employees, thereby reducing the risk of identity theft;
- ***Preserves Social Security*** – NEVA ensures the American public receives the services they have earned through the Social Security Administration by requiring advance full funding for employment verification activities.

With E-Verify set to expire in November of 2008, it is time to build on this voluntary experiment with electronic verification and transition to a comprehensive approach to worksite enforcement. NEVA addresses many of the real concerns we and others have with mandating E-Verify. NEVA is strongly supported by the National Federation of Independent Business, the National Association of Home Builders, and the H.R. Initiative for a Legal Workforce, which includes the National Association of Manufacturers. If you have any questions regarding NEVA, please contact Kathleen Black (Johnson personal office) at 5-4201 or Caryn Schenewerk at 5-2542 (Giffords personal office).

Sincerely,

s/ Sam Johnson  
Member of Congress

s/ Gabrielle Giffords  
Member of Congress

Enc.

**E-Verify Debunking Exposes Debunking Errors**  
*posted by Jim Harper on 05.21.08 @ 3:12 pm |*  
*The Cato Institute - Cato@Liberty Blog*

Congratulations are due once again to the Department of Homeland Security for engaging in open dialogue about its programs, even controversial ones like "E-Verify" -- a system that Congress may require all U.S. employers to use for running federal background checks on every single new employee.

Openness is healthy, and the comments to a recent post on E-Verify by my old friend DHS Assistant Secretary for Policy Stewart Baker are poking some holes in his somewhat facile analysis. I'll weigh in with a little more, based mostly on my recent paper "Electronic Employment Eligibility Verification: Franz Kafka's Solution to Illegal Immigration."

Baker says that critics claim the error rate in E-Verify is as high as 4% and will lead to millions of Americans losing their jobs by mistake. To refute this, he points to a study commissioned by the Department of Homeland Security showing that 94.2% of new hires in a sample of 1,000 E-Verify queries were automatically verified, 0.5% resolved a mismatch, and 5.3% received a final nonconfirmation (that is, they either didn't try or couldn't challenge the finding that they were ineligible for employment under U.S. immigration law).

Unfortunately, Baker doesn't point to the actual study. He just links to a picture of a conclusion from it, so we can't do much to analyze these figures. If these are the results from reviewing only 1,000 new hires by current E-Verify users, that is far too small a sample and too skewed a group to reflect what would happen were the program taken national.

And he concludes: "Of the thousand, 942 are instantly verified. Instant verification of legal workers surely can't be an error." Of course it can! Any number of the 942 might have been illegal immigrants who submitted the name and Social Security Number of a legal worker to the employer.

But putting Baker's glib, erroneous conclusion aside, I believe the 4% figure cited by critics is not about today's small E-Verify program. It's the error rate in the Social Security Administration's Numident database found by the SSA's own Inspector General (and it's 4.1%!). Simple math suggests that this would produce a tentative nonconfirmation in 1 out of 25 new hires in the country were E-Verify to go national.

In fairness, that simple math may actually be simplistic -- perhaps some cohorts have higher error rates and others lower. We know, for example, that naturalized citizens suffer error rates in the area of 10%. Perhaps older citizens that are leaving the workforce have higher error rates, leaving a lower error rate among current workers. And over time, the error rate would drop as workers were sent from their jobs to Social Security

Administration offices trying to get their paperwork in order. (Put aside for now that the SSA takes more than 500 days to issue disability rulings.)

Baker's conclusion that the 5.3% of workers finally nonconfirmed are illegal workers is without support. The statistic just as easily could show that the 5.3% of law-abiding American-citizen workers are given tentative nonconfirmations, and they find it impossible to get them resolved. More likely, some were dismissed by employers, never informed that there was a problem with E-Verify; some didn't have the paperwork, the time, or the skills to navigate the bureaucracy; and some were illegal workers who went in search of work elsewhere, including under the table.

American workers pushed out of the workforce by E-Verify -- Baker treats it as "common sense" that they're illegal aliens, and he doesn't look any further. The E-Verify program does the same - it has no system for contesting or appealing final nonconfirmations.

With his post, Secretary Baker has only raised the question of error rates in E-Verify. There are many sources of error in a system like this, and making it bigger would reveal more. Just because you have a glass coffee table, that doesn't mean you can build a glass sundeck.

And we shouldn't take our eye off the ball. "Mission creep" is a governmental law of gravity. Once in place, a national E-Verify system would be used to give the federal government direct regulatory control over law-abiding Americans. Federal authorities would use it to control not just work, but housing, financial services, and access to alcohol, tobacco, and firearms -- for starters. Secretary Baker himself recently suggested using a national ID to control our access to cold medicine. The list of things his successors might do is endless.

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